

The Washington Post

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U.S. Department of Transportation Dockets
Docket No. FAA-1999-6001
400 Seventh St., S.W.,
Room Plaza 401
Washington, D.C. 20590

Re: Notice of Proposed Rulemaking, Protection of Voluntarily Submitted Information –
Docket No. FAA-1999-6001; Notice No. 99-14

Dear Sir or Madam:

On behalf of The Washington Post, I submit this letter to comment on the Federal Aviation Administration's Notice of Proposed Rulemaking concerning Protection of Voluntarily Submitted Information (Docket No. FAA-1999-6001; Notice No. 99-14).

The Washington Post is a daily newspaper of general circulation in the Washington D.C. metropolitan area. It regularly reports on matters related to aviation safety and security. The proposed rules are of concern to The Post because they spell out the parameters that will guide the FAA's disclosure to the public of information voluntarily provided to the FAA.

In the relevant statute, Congress has directed the Administrator of the FAA not to disclose such information if the Administrator makes certain required findings, including the finding that withholding the information would be "consistent with the Administrator's safety and security responsibilities." (49 U.S.C. § 40123(a)(2)).

These responsibilities are not further defined in the statute, but they are defined both explicitly and implicitly in the proposed rules. We recognize, as do the rules, the importance of the Administrator's responsibility to encourage voluntary provision of information from airlines and individuals.

The Administrator's "safety and security responsibilities" also include providing the public with safety and security-related information. The public has a strong interest in access to such information. In addition, public confidence in the FAA's handling of such issues is of obvious importance, and disclosure of relevant information builds and sustains such confidence. In some respects the proposed rules recognize the Administrator's responsibility for informing the public, but this responsibility has not been given sufficient weight.

The specific proposals that appear below would strengthen public disclosure in a manner consistent with the need to encourage voluntary provision of information to the FAA. These proposals (a) require the Administrator to take into account the public interest in disclosure, along with the other factors already enumerated in the rules, in determining whether information should be designated as "protected"; (b) make disclosure in certain limited circumstances mandatory; and (c) add an additional instance in which disclosure is warranted.

The proposed rules should be amended as follows:

1. In Sec. 193.5 (b) 5, add the following language at the end of the subsection:

"In making the determination required by this subsection, the Administrator shall take into account the public interest in disclosure of safety and security information."

1. In Section 193.7 (a) (1), delete "may" and insert "shall."

1. In Section 193.7 (a) (2), delete "may" and insert "shall," and insert after "security" the following language:

"or to show corrective action already taken to correct such condition."

If you do not find the above proposals acceptable as written, please consider adopting them with the addition of language limiting disclosure to "deidentified and summarized" information.

In closing, we stress the importance of the procedures in the proposed rules for designating information as protected (Sections 193.9, 193.11). They provide important protection for the public's interest in obtaining safety and security-related information. These

features include the following:

- Information is not protected from disclosure unless and until the specified procedures are followed.
- There is public notice and opportunity for comment before decisions are made, except in limited circumstances.
- The Administrator's decisions will contain specified detailed explanations, including how protected information will be distinguished from unprotected information which will be available to the public.

Thank you for your consideration of The Post's comments.

Sincerely,

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Carol D. Melamed
Vice President, Government Affairs